IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 740 (SS) of 2003

Smt. Leelawati Pandey @ Leela Pandey,
W/o late Sri Hari Dutt Pandey,
R/o Village Majhera, New Basti,
Post Office – Garampani,
District – Nainital. **…….Petitioner.**

Versus

1. State of Uttaranchal through Secretary, Education Basic Dehradun.
2. District Inspector of Schools, Nainital, District – Nainital.
3. District Basic Shiksha Adhikari, Nainital, District – Nainital.
4. Smt. Kamla Pandey, D/o not known, R/o village – Negigaon, Pandey Gaon, Kotabahg, District – Nainital.
5. Finance Controller, Basic Shiksha Parishad, Uttar Pradesh, Allahabad.
6. Finance Controller, Basic Shiksha Parishad, Uttaranchal, Dehradun.
7. Account Officer, Basic Shiksha Parishad, Nainital, District – Nainital.

……Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri B.S. Khanka, learned counsel for the petitioner, Sri Syed Nadim, learned Standing Counsel for the State of Uttaranchal on behalf of respondents no. 1 to 3,6 and 7 and Smt. Beena Pandey, learned Standing Counsel for the State of Uttar Pradesh on behalf of respondent no. 5.

By means of this writ petition, the petitioner has prayed for the following reliefs:

I. issue a writ, order of direction in the nature of Mandamus commanding the respondents to give the

family pension to the petitioner and stopped to give the family pension to respondent no. 4 after death of late Sri Hari Dutt Pandey.

II. *issue a writ, order or direction in the nature of Mandamus directing the respondents to give arrears of the family pension and other allowances since 23.05.1994.*

III. *issue any suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

IV. *Award the cost of petition.*

The submission of the petitioner is that late Sri Hari Dutt Pandey, who was husband of the petitioner, was teacher in Basic Education Board and he was retired from service 30.06.1987. Sri Hari Dutt Pandey died on 22.06.1994. Being the first and legally wedded wife, petitioner applied for family pension but family pension was not granted to her, consequently, petitioner filed present writ petition.

Respondents have filed short counter affidavit. In paragraph 4 of the short counter affidavit, respondents have submitted that Sri Hari Dutt Pandey was a teacher in Basic Education Board, U.P. On 13.02.1985, when he was posted as Headmaster, Primary School, Negigaon, Tehsil and District – Nainital, has submitted his declaration as per Rules of the Basic Education Board. The said declaration form is filled by the employee of the Board in presence of the witnesses, for the purpose of nominating family members of the employee for the purpose of payment of arrears of salary, provident fund, pension, group insurance etc. In the said declaration

form, the deceased nominated Smt. Kamla Pandey, wife of Sri Hari Dutt Pandey (respondent no. 4), resident of Negigaon, Tehsil and District – Nainital as first nominee and declared herself to be his wife. He declared second nominee to be his nephew (son of his elder brother) in the said declaration form.

Nowhere the name of the petitioner is found in any capacity in the declaration form, thus, the petitioner has no right to claim family pension of deceased late Sri Hari Dutt Pandey.

Since disputed questions of facts have been arisen, such as who is the legally wedded wife or who is the first wife of Sri Hari Pandey, further whether petitioner should be treated as legally wedded wife in spite of the fact that late Sri Hari Dutt Pandey in his declaration form for nomination has nominated Smt. Kamla Pandey (respondent no. 4, who is getting family pension) as his wife and first nominee to get pension, GPF, Insurance and other dues.

This court has no jurisdiction to decide disputed questions of fact under Article 226 of the Constitution of India. Petitioner may avail appropriate remedy to get family pension, if she is entitle for the same being legally wedded wife of late Hari Dutt Pandey.

For the reasons recorded above, writ petition is dismissed. Stay application no. nil of 2003 is rejected accordingly. No order as to costs.

(M.M. Ghildiyal, J)

December 12, 2006
SKSharma